

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Arbor Pharmaceuticals, LLC,

Case No. 17-cv-04910 (DWF-LIB)

Plaintiff,

v.

August 25, 2021 Jury Trial

ANI Pharmaceuticals, Inc.,

Defendant.

JOINT STATEMENT OF THE CASE

This case is titled “Arbor Pharmaceuticals, LLC v. ANI Pharmaceuticals, Inc.” It is about alleged false advertising [and unfair competition¹] in the marketing of prescription drugs.

The “Plaintiff” is the party that is bringing this suit. Here, the Plaintiff is Arbor Pharmaceuticals, LLC, a drug company based in Atlanta, Georgia.

The “Defendant” is the party being accused of alleged wrongdoing. Here, the Defendant is ANI Pharmaceuticals, Inc., a drug company based in Baudette, Minnesota.

Arbor and ANI compete in the sale of prescription drugs, including a prescription antibiotic known as erythromycin ethylsuccinate oral suspension. Arbor and ANI do not sell their products directly to consumers; instead, they market and sell to drug wholesalers, retail pharmacies, and similar customers.

Arbor markets and offers for sale two erythromycin ethylsuccinate oral suspension antibiotic products called EryPed[®] and E.E.S.[®] Granules (“EryPed and E.E.S.”). Arbor

¹ Requested by Plaintiff. Defendant opposes.

began selling EryPed and E.E.S. products in 2011, and has offered them for sale continuously since then through today.

ANI markets and offers for sale a generic erythromycin ethylsuccinate for oral suspension, which I will call its “EES product.” ANI began marketing its EES product on September 27, 2016, and has offered it for sale at all times since then through today.

This case concerns ANI’s marketing and sale of its EES product between September 27, 2016, and November 2, 2018. This is the “relevant time period” for this case.

Arbor alleges that ANI falsely advertised and promoted its EES product as FDA approved and an AB-rated substitute, and that this false advertising and promotion influenced customers to purchase its EES product.

ANI denies these allegations.

Arbor alleges that ANI’s alleged false advertising [and unfair competition] injured it by causing Arbor to lose sales and profits. In this case, Arbor is asking to be awarded damages based on these alleged lost sales and profits.

ANI denies that the Arbor is entitled to any award of damages.

Your job at the end of the trial will be to determine whether Arbor has proved that ANI falsely advertised its EES product [or engaged in unfair competition²], and if so whether such false advertising [or unfair competition] [influenced customers and³] caused harm to Arbor.

² Requested by Plaintiff. Defendant opposes.

³ Requested by Defendant. Plaintiff opposes.

Respectfully submitted this 29th day of July, 2021 by:

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